

# Dispute Settlement on Anti-Dumping Policy: Case studies of pulp and paper products

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**Abstract**—This article aims to examine the dispute settlement issue regarding the anti-dumping policy, which involves several countries against Indonesian pulp and paper products. This study adopted qualitative research method by using two cases studies about anti-dumping policy of Pakistan and South Korea. The research contributes to the debate on economic policy on international trade by discussion on how developing countries could have a fair chance to participate in the trade and development process.

**Keywords**—*pulps and papers; anti-dumping policy; dispute settlement; World Trade Organization*

## I. INTRODUCTION

Dispute Settlement Understanding (DSU) is the most noticeable achievement of the Uruguay Round, which embrace economics in their decision-making process [1]. The emerging concept of trade liberalization and the principles of comparative advantage have provided the foundation for the present rules-based system [2]. In the General Agreement on Tariff and Trade/WTO regime, the non-compliance has become a lower threshold than most other area of international law. The compliance includes how the WTO members honor their promises made during international treaty-making in which their national interests may come to conflict with the commitments [3].

It appears that Indonesia has been accused several times for involving the price of an exported good being lower than the price of the same good in the exporting country, which called as dumping.<sup>3</sup> Antidumping duties can be applied in certain circumstances when dumping takes place. The first case was anti-dumping duties from Korea (June 4, 2004), then followed by South Africa (May 9, 2008), Pakistan (November 27, 2013), and USA (March 13, 2015). The anti-dumping duties imposed to Indonesian paper producers had brought many disadvantages to Indonesian pulp and paper industry. Therefore, Indonesia requested a bilateral consultation through WTO which was failed [4].

Antidumping measure is common “administrative protection” where trade policy analysis spanning national governments and trade policy law firms attempting to assure that trade is “fair.”<sup>2</sup> Trust deficit, mutual suspicion and political differences are common in almost all regional relations and are not unique to South Asia. In Asia,

longstanding political differences were kept aside while efforts toward regional integration were made. Increased integration provides formal and informal channels of communication and gradual building of trust among countries [5].

Trade facilitation refers to the simplification, harmonization, standardization and modernization of trade procedures in terms of import and export processes [3]. It encompasses a wide range of activities involving the interface between business and government and which influence transaction costs. The definition is further extended to mean the improvement of transport infrastructure, eradication of government corruption, reduction of customs tariffs and resolution of non-tariff trade barriers, and export marketing and promotion. It is widely argued that countries that implement trade facilitation reforms and enhance trade efficiency and connectivity are generally expected to attract more foreign direct investment [6].

However, the era of globalization is confronting changes the market turbulence [7]. It is essential for the principle of competitive advantage to confront the changes to deal with de-globalization with limited shocks to internal and global economic systems [8]. There is an inevitable conflict, even in trade negotiations, which extend the regulatory convergence.<sup>8</sup> WTO may withdraw the plan for market participation when the political landscape changes international agreement guarantees [9].

This study attempts to examine how the dispute settlement practices regarding the anti-dumping policy in pulp and paper industry. The research is expected to contribute to the debate on economic policy on international trade by discussion on how developing countries could have a fair chance to participate in the trade and development process.

## II. RESEARCH METHOD

This study used content analysis by examining the documents, which give meaning around an assessment topic that incorporates coding content into topics [10]. It is virtually impossible to collect data on every state action that would be judged as being in compliance with some form of international law [11]. The analysis was conducted in two steps. The first step focused on grouping the data into distinctive meaning unit. The next step was coding the meaning units that researcher categorized within each of the domains into which they were

organized. This allows the researchers to highlight some issues which regard from the previous literature [12].

### III. FINDINGS

#### A. Case I: Indonesia and Pakistan

Indonesia proposed a dispute to the World Trade Organization (WTO) to fight the Accusation of Pakistan. Pakistan had accused Indonesia doing the dumping and countervailing of certain imported paper products. Therefore, Pakistan started an investigation of Indonesia about Anti-dumping and countervailing duty. Indonesia proposed a request on 27 November 2013. Indonesia sent the request to the World Trade Organization's secretariat to hold a formal consultation between Indonesia and Pakistan about a pair of duty investigations on Indonesian writing and printing paper [13].

The consultation that Indonesia requested is the beginning of dispute settlement process under the World Trade Organization. Pakistan started an anti-dumping investigation on 10th November 2011, which investigate the imported writing and printing paper from Indonesia. Surprisingly, on 23rd November 2011, Pakistan also launched another investigation to find out whether the domestic industry (paper industry in Indonesia) received improper or illegal subsidies, called countervailing, from the government of Indonesia. Both investigations are addressed to Indonesia's major paper manufacturers, which are Asia Pulp and Paper (APP) and Riau Andalan Pulp and Paper (RAPP) [14].

Asia Pulp and Paper is the subsidiary of Sinar Mas and Riau Andalan Pulp and Paper is the subsidiary of Asia Pacific Resources International Holdings Limited (APRIL). However, the investigations were suspended by the Pakistani Courts. Hence, the decision of the Islamabad High Court to suspend the investigation is still under appeal which lead the investigation delayed. On the other hand, Indonesia claim that they have not been informed about the judge decision in the final court have the anti-dumping investigation. The government of Indonesia is not just sitting alone waiting for the judge decision. They prepared to challenge the anti-dumping and countervailing investigation on their paper products by Pakistan [15].

In the requested consultation, Indonesia stated that from 27th November 2013, Pakistan had not yet closed the investigation. Indonesia felt that Pakistan has violate the limit of anti-dumping and countervailing investigation under the World Trade Organization, which the limit is 18 months. Hence, Pakistan is inconsistent with their duty, to close the investigation, under the agreement on the on Anti-dumping, which is the agreement on Subsidiaries and Countervailing measures, and also the GATT 1994 [16].

With the requested consultation by Indonesia, now both of them only have 60 days to discuss the issue. If two parties cannot solve the dispute by the given time, Indonesia can request the World Trade Organization to establish a dispute settlement panel to consider the case. The authors have found another information about the abundant raw materials for paper in Indonesia. The company success to manage the raw material

efficient and effectively which make their product affordable with great quality [17].

However, Pakistan did not investigate about the fact in Indonesia first. They just accused Indonesia's paper company do the dumping and countervailing in their country because the price that the paper sold in Pakistan is low. Pakistan thought that with their low price, they must be reduce the quality of the paper product. Therefore, Pakistan accused

Indonesia's paper company do the dumping and countervailing, and they are helped by the government. Indonesia is one of the world's 10 largest pulp and paper producers in the world. Because of the position, Indonesia often been accused doing the dumping on its paper export.

According to Indonesia, during the investigation by Pakistan, Sinar Mas has lost it sales in Pakistan because customers are cautious to place their order in Indonesia's paper manufacturer. Simply, it is because that they are afraid and there is uncertainty about when the government will decide upon the case. Arvin Gupta, Asian Pulp and Paper (APP) commercial director, stated that Sinar Mas subsidiary suffered a loss around US\$ 1 Million each month because of the investigation case. Sinar Mas could suffer around US\$ 30 Million because the investigation has been going on for 30 months.

Additionally, there is another case in Pakistan on 2010 that some of the Indonesian coated and uncoated paper and paperboard manufacturers were investigated by the Pakistani National Tariff Commission about the dumping accusation. However, the official closed the case as the petitioner and withdrew the requests for formal investigation after they receive the statement of Lahore High Court that the tariff commission's step was illegitimate. On 12th May 2014, Indonesia has requested the World Trade Organizations to establish of a panel. Hence, on 23rd May 2014, The Dispute Settlement Body (DSB) deferred the establishment of a panel.

The key players in this case are the Asian Pulp and Paper (APP) Company, Indonesia government, Pakistani National Tariff Commission, Islamabad High Court, WTO. Pakistani National Tariff Commission accused Asian Pulp and Paper (APP) Company, and Riau Andalan Pulp and Paper (RAPP) Company. But, APP company only that challenge Pakistan, because they support the government's intention to step up and fight the case. This movement is necessary due to the investigation has a significant impact on shipments to Pakistan.

Pakistani National Tariff Commission, who accused Indonesian paper company do the dumping and countervailing, also accused that both practical are helped by the Indonesian Government. They conduct an investigation to check whether the Indonesian company is actually do the dumping and countervailing in Pakistan country. However, the investigation was conducted more than 18 months, and they have to bear cost for US\$ 1 million each month.

Indonesian government attempted to defend the company. They notified the secretary of the WTO for request formal consultation about that case. Indonesian government thinks that Pakistan acted inconsistently with:

- Articles 1, 5.10, 18.1 and 18.4 of the Anti-Dumping Agreement
- Articles 10, 11.11, 32.1 and 32.5 of the SCM Agreement
- Articles VI, X:1, X:3(a) and XI:1 of the GATT 1994.

Pakistan's response to Indonesia request consultation was not satisfied. In fact, Pakistan authorities said that they were still waiting for the final decision of the appeal. Thus, the government consulted its Pakistani counterpart through the World Trade Organizations by the end of February 2014. It is a precondition before a formal challenge can be made under the mechanism of the global trade governing body. Then, Indonesian Government requested the 60-days deadline for Pakistan to stop its probes. However, the requested was expired earlier April 2014.

Islamabad High Court suspend the investigation that were being carried out on Indonesia's major paper company, Asian Pulp and Paper (APP) Company and Riau Andalan Pulp and Paper (RAPP) Company. Therefore, Pakistan could not finish the request within 18 months. On the other hand, the ruling of Islamabad High Court to suspend the anti-dumping investigations is still under appeal.

The World Trade Organization played a role as a mediator for both Indonesia and Pakistan to solve their conflicts. In this case, the most important player right was the Pakistan, since if Pakistan could finish the investigation within 18 months, then Indonesia government would not take other move to have consultation. Right now, the panel has been requested by Indonesian government and waited to be approved by the Dispute Settlement Body (DSB), which is still deferred by the DSB.

#### *B. Case II: Indonesia and South Korea*

Korea had filed an anti-dumping policy on certain paper from Indonesia. Indonesia as the complainant requested for consultation with Korea through WTO, however the bilateral consultation, did not achieve any win-win solution for both parties. Thus, Indonesia requested to establish a panel with third party participation on February 1-2, 2005, and March 30, 2005. Korea felt that Indonesia had dumped the price excessively so that Korean domestic industry in the same sector suffers. Therefore, KTC required some companies from Indonesia to pay for Anti-dumping duties for certain paper.

This case is the first case that Indonesia acts as a complainant. The problem arose when Korea's pulp and paper industry gave antidumping petition on certain paper from Indonesia to Korean Trade Commission (KTC) on September 20, 2002. accessed on March 8, 2015). After receiving complaints from the industry, KTC sent questionnaire to four Indonesian companies; they were required to submit detail financial information regarding domestic and export sales to the KTC; domestic sales were made through PT Cakrawala Mega Indah (CMI), thus Indah Kiat and Pindo Deli told KTC that they would not able to submit CMI's financial information since they have no control. Surprisingly, a day before the due date, Indah Kiat and Pindo Deli were able to submit CMI's financial information. Tjiwi Kimia did not do what KTC asked

to do because Tjiwi Kimia argued that its export to Korea was insignificant to be included in the investigation. KTC planned to investigate on November 14 2002 and noticed the public on November 26 2001.

For the final determination, KTC treated Indah Kiat, Tjiwi Kimia, and Pindo Deli as one exporter since these three companies were the part of Sinar Mas Group (treated as single economic entity). Sinar Mas Group will be imposed 8.22% for anti-dumping duties, 2.8% for April Fine and other Indonesian exporters. Moreover, KTC also determined material injury for the applicants.

Feeling unfair, Indonesia requested bilateral consultation through WTO on June 4 2004, then the bilateral consultation took place on July 4 2004. The consultation between Indonesia and Korea did not achieve a good result for Indonesia. In this way, Indonesia requested for panel establishment. The sources from the WTO official document stated that Indonesia felt KTC had failed to make a sufficient and detail analysis about this problem. For example, Korea failed to make a fair comparison between export price and normal value which make it inconsistent with article in the agreement; another, Korea's treatment of single economic entity to three companies owned by Sinar Mas Group was also inconsistent, and so forth. October 2005, that WTO had agreed on Indonesia's statement regarding agreement violation made by Korea. Hence, in its first dispute settlement through WTO, Indonesia won the dispute.

#### *C. The Industry*

##### *D. Indonesia*

Indonesia is one of the largest pulps and paper producers in the world; further, this industry is one of the top 20 commodity sectors in Indonesia. The industry has rapidly expanded to increase the capacity of the pulp production. Between 1998 and 2010, the production and process capacity were almost 10 times higher, 7.9 million metric tons per year and 12.2 million tons per year respectively. Although there is no local machinery production to produce pulp and paper, yet the production can be exported for \$561 million in total in the first quarter of 2013, as reported by [www.pulppaperasia.com](http://www.pulppaperasia.com) (accessed on March 8, 2015).

This huge success was initiated by the implementation of Indonesian Wood Legality Verification System (SLVK) on exports. Indonesia's main partners are Japan, South Korea, China, Vietnam and Malaysia. Therefore, any barrier for pulp and paper sector will affect Indonesia directly. One of the famous player in the sector is Eka Tjipta Widjaja, who was awarded as one of the Indonesian richest people by Forbes. He established three biggest pulp and paper producers, PT Indah Kiat Pulp & Paper Tbk, PT Pindo Deli Pulp & Mills, PT Pabrik Kertas Tjiwi Kimia Tbk, are owned by Sinar Mas Group.

##### *E. South Korea*

Reported by Lee (2000) in his article "Korea battles back", Korea was ranked as the 9<sup>th</sup> biggest paper and pulp industry for paperboard capacity and outcome in 1998. However, the financial crisis in 1997-1998 had made Korea's pulp and



industry were left in shock. The demand of this industry was decreasing and many of businesses unable to meet its financial debt, thus they were suspended and even gave up.

To overcome this crisis, many businesses of pulp and paper industry were acquired by foreign MNEs, such as, Proctor & Gamble (P&G), Bowater, Norske Skog and Mayr-Melnhof Karton Austria. These foreign MNEs infused investment to some Korean pulp and paper producers during time of distress. One of the business in this dispute, Shinho paper, was infused by Norske Skog. Korea has a chemical pulp company which has capacity 400,000 metric tons of chemical pulp, 5.44 million and 5.11 million tons for paper and paperboard respectively.

By the year of 1999, the demand began increasing due to the foreign investment and paper output grew 5.1% and paper consumption grew 4.9% per year. At the same year, Korea's pulp and paper industry grew stronger as it had become the major exporter in the world. Korea's target markets are Southeast Asia, Hongkong, China, Europe, Latin America, Middle East and North America.

#### *F. Pakistan*

Pakistan's economy condition can be positioned at 27th largest economy with the Purchasing Power Parity as US\$ 488 Billion. For paper product and the raw materials such as the pulp and waste, Pakistan depend on the import activities from other country. It is because the domestic production can only fulfill part of the national demand from six basic products such as the duplex board, writing and printing paper, craft paper, tissue paper, poster paper, and the corrugated medium paper. Therefore, the demand for paper product in Pakistan is fulfilled by the import [16].

In 1995-1996, the number of papers imported to Pakistan had increased from Rs 270 Million to Rs 5,412 Million. Even though there are some paper manufacturers in the Pakistan, the price of domestic paper was influenced by the international prices in the international market. Almost two decades that some paper manufacturers have been established but Pakistan still depend on the imported paper and the basic raw material for all paper product [15].

From the statistics data that the writer found, 234,555 tons of paper products were imported to Pakistan with the cost of Rs 5,5 Billion in the 1998. There was an increase from the 1997. The data shown that the Rs 5,5 Billion was for the import paper product, Rs 1,4 Billion for the newsprint imports, and Rs 1,036 Billion for the imported pulp. Rs 3,06 Billion is the biggest amount that Pakistan spent on the importation of duplex and Rs 499 Million on the wrapping and packing paper which are domestic manufactured. From the data shown, hence, Pakistan heavily dependent on the imported paper product which required the great technology [12].

In 2012, paper industry in Pakistan already has different units in other country to produce the various grades of paper using both domestic and imported raw materials. However, there were many units closed from 2012 because of the poor planning during 1980-1990. The forest area in Pakistan is just around 4.2 million hectares which, according to internationally acceptable ratio for balanced economy, was far below the ratio.

Therefore, the rate of usage Paper product in Pakistan are beyond the local capacity and to fulfil the demand, Pakistan import their paper product from other countries [13].

## IV. DISCUSSION

### *G. Insight from Case I*

These accusations had brought negative impact to the pulp and paper industry in Indonesia. It makes paper product unattractive and unable to compete with world market. Even though anti-dumping duties imposed by those countries have been removed, but if this continues, the industry will suffer from time to time.

The pulp and paper industry from Indonesia demonstrated a high competitiveness and competitive advantages so that it can conquered the world market. Therefore, it is important to make a specific regulation regarding anti-dumping issue since the presence of institutions, Indonesia Anti-dumping Commission to anticipate anti-dumping issue in Indonesia is weak [12].

Beside anti-dumping issue, Indonesia can focus more on the dumping issue made by other countries. The protection of domestic product must be continued to prevent accusation from other countries, as well as to protect domestic industries from product with dumping indication. Through this case, it is shown that the Indonesian Government are capable to prove Indonesia's innocence toward dumping accusations. If Indonesia continues to make a careful analysis for the future case, Government experiences will improve significantly. Just because Indonesia is developing country does not mean other country can underestimate Indonesia and treat the business players unfairly [11].

For Indonesian paper producers, coordination with government is the most important thing when facing dumping and anti-dumping duties issue. Moreover, a good financial report given to Government means a big help for investigations. It is suggested for Indonesian paper producers to always maintain credibility in the business so that they won't be accused from having dumped their product in the international market. Besides, it is important to analyze the local market, whether there is company who does dumping. If there is one, individual company or some local companies, or an association of the industry may report the dumping issue to KADI by filling a form consisting of description of product being dumped as well as the exporter and importer information [12].

Implementation of DSB Decision by South Korea Due to Anti-dumping duties imposed by KTC, Indonesia's paper industry had suffered 500,000 USD each month as stated by Director General of International Trade as reported by BaliPost.com (accessed on June 17, 2015). Yet the anti-dumping duties had not been removed until 2010. It took 5 years for KTC to remove the duties which means that South Korea violates the date agreed during the panel. Particularly, it was November 2010 when South Korea finally remove the anti-dumping duties. It was believed that this way (antidumping duty implementation by KTC) is a tactic to eliminate Indonesian paper producers from South Korean market. However, big Indonesian paper producers felt that

what KTC had done to them was unfair. Thus, these companies urge Indonesian Government to establish a bilateral consultation through WTO. Some people imply this urge as a revenge for South Korea [13].

The support from Government is tremendously important to every industry in many countries. Without this support, an industry will be the victim of anti-dumping duties or dumping products in the local market. Business players and Government needs to work together. In this case, business players are the victim of the barrier imposed by other country, thus Government is the one who prepares and presents the case to WTO. While preparing and presenting the case, Government will definitely require all relevant data and information needed to analyze from business players. Business players are required to be open-minded and want to provide what the Government required them to provide [14].

Usefulness of using WTO to settle a dispute Developing countries who never used WTO will never find that WTO can be useful. There are some factors making a country unwilling to use WTO: cost, lack of experience, and fears of retaliation. Nevertheless, sufficient evidence and careful analysis from Indonesia has enabled them to win the dispute. It also actually can reduce direct and indirect cost of the case. Moreover, by bringing the case to WTO, Government will have more experience, networks, and capability to reduce the cost for future cases [15].

Successful negotiation has brought a good image for Government and WTO. Many people believe that Globalization has brought a greater negative impact on the weaker one (poor and developing countries). DSB WTO was seen to be always stand for stronger countries. However, through this case, Indonesia is able to show that weaker countries are able to prove the stronger one wrong. Hence, people's confidence will increase as they will use diplomatic, legal and economic capability of the government. Further, the perception of one-sided WTO can be diminished [16].

Choosing the strong legal case accompanied by willing partners. It is important to bring a strong legal case and willing partner to be involved to the WTO for the first case since the cost for the first one is high. The government also need to be "All Out" in the first case, even to use any resources and foreign legal help despite its high cost. However, if the government wins the first case, a good start has been in the pocket [17].

Korea anti-dumping duties imposed to Indonesian paper producers had brought many disadvantages to Indonesian pulp and paper industry. Therefore, Indonesia requested a bilateral consultation through WTO which was failed. Then, panel establishment was also requested by Indonesia in order to eliminate any unfair treatment by KTC. At the end, Indonesia won this case, yet the implementation took 5 years to be proceeded [16].

For years, WTO has been viewed as one-sided tool to support strong countries (advanced country with tremendous power and influence). However, one never knows how WTO through Dispute Settlement Body (DSB) is actually can benefit a weak country (poor and developing countries) if it is used.

From the case of Korea-Anti Dumping Duties on Imports of Certain Paper from Indonesia, readers can learn that developing country like Indonesia can win the case with careful and appropriate planning. It gives evidence that every member of WTO can also benefit from DSB [17].

#### *H. Insight from Case II*

There are some strategies that the writers proposed to Indonesia so that the case will not happen again in the future and Indonesia can gain the trust from other importer across the countries. First, Indonesia must provide some proofs or evidence if Indonesia did not do the dumping and Government Indonesia did not do the illegal subsidies of the paper raw materials. Indonesia can give a selling report in Indonesia and Pakistan. The price of the paper product that sold in Indonesia and the price that Indonesia sell in Pakistan. By doing the activities, Indonesia can make the Pakistan realize that Indonesia do not do the dumping. Moreover, Indonesia could give the fact about how many raw materials are available in Indonesia, and from one tree, how much paper they will get. If Indonesia can provide this data, then Pakistan can learn to calculate the cost for the paper product in Indonesia. Indonesia could also provide the data about the cost in every paper production which is called Cost of Goods Sold. Government of Indonesia could also give a proper certificate of Wood Legality Verification system to prove that Indonesian government did not do the countervailing to help the Sinar Mas [17].

Second, when the evidences are all gathered, Indonesia could give a warning or pressure for Pakistan to close the investigation immediately. From the story that the writer gathered from all the resources, there is a case where the Islamabad High Court pending the investigation with no obvious reason. This problem could give a damage in the sales of paper from Indonesia to Pakistan. Even though Indonesia export the paper not only to Pakistan, but Pakistan import value is also high and could give big impact for the Indonesia sales. Therefore, rather than waiting for the decision until 60 days, the writer argued that Indonesia could give a pressure to Pakistan in a soft way by giving a letter or proposal regarding the evidence too. Therefore, if Indonesia success to threat Pakistan, Pakistan will immediately close the investigation and begin to import the paper product again [18].

Third, Indonesia must set and international standard for the paper product in order to gain back the trust of those who are doubted to place an order in Sinar Mas Company. After succession the second strategy, Indonesia could register their paper product to international standard such as ISO. However, from the previous search, the writer found that Indonesia has SVLK to help boosting their export. If that verification is not enough, then it is important for Indonesia to make their product internationally standardized. Not only to prevent this issue happen again in the future, but it also can gain other country trust to place their order in Indonesia paper manufacturer [19].

Pakistan accused Indonesia to do the dumping and countervailing without giving attention about the abundant raw materials in Indonesia. Not only accused, but they also pending the investigation which make Indonesia lost about US\$ 30 million. Therefore, there are some strategies that are proposed

by the strategies for Indonesia to solve the problem and to prevent this problem to happen again in the future [20].

In order to keep up the maximize performance of the paper manufacturer, it is essential for a company in developing countries create a group to do the strategy and to solve the problem. By doing this, the paper manufacturer will still focus on the producing and exporting the paper product without being disturbed by the case, and the case might be solved immediately. Therefore, the paper manufacturer not only focus on one thing, but they can focus organizational and community environment.

## V. CONCLUSION

This article extends the discussion on international trade theory by examining the dispute settlement on cigarette. Using an interpretive-inductive research method, this study argue that dispute settlement system allows the developing countries to transform the diplomatic resolution of the case with legal guidance to a quasi-judicialized system.

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